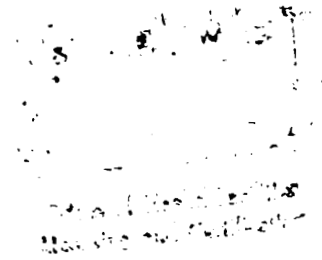
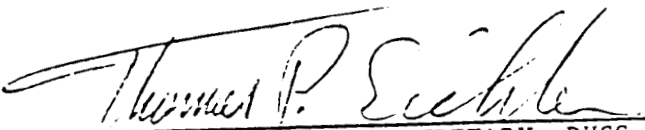


RULES AND REGULATIONS  
GOVERNING  
DELAWARE'S PATIENT ABUSE LAW



APPROVED:

  
THOMAS P. EICHLER, SECRETARY, DHSS.

  
DATE

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SECTION I: DEFINITIONS

A. The term "Abuse" shall mean:

1. Physical abuse by intentionally and unnecessarily inflicting pain or injury to a patient or resident. This includes, but is not limited to:
  - a) Striking the patient or resident by using a part of the body, such as hitting, pushing, kicking, slapping, pinching, beating, shoving, sexual molestation.
  - b) Striking the patient through use of an object, such as water in a glass, a rubber band, a towel, etc.
2. Emotional abuse which includes, but is not limited to:
  - a) Ridiculing or demeaning a patient or resident.
  - b) Making derogatory remarks to a resident or patient.
  - c) Cursing directed towards a patient or resident.
  - d) Threatening to inflict physical or emotional harm on a patient or resident.

B. The term "Mistreatment" shall include the intentional, inappropriate use of medications, isolation or physical or chemical restraints on or of a patient or resident.

C. The term "Neglect" shall mean:

1. Intentional lack of attention to physical needs of the patient or resident including, but not limited to, toileting, bathing, meals and safety.
2. Intentional failure to report patient or resident health problem to an immediate supervisor or nurse.
3. Intentional failure to carry out a prescribed treatment plan for a patient or resident.

D. The term "Facility" shall include any facility required to be licensed under Chapter 11 of Title 16 of the Delaware Code. It shall also include any facility operated by or for the State which provides long-term care residential services.

E. "Patient Rights Unit" means that unit within the Division of Aging with designated investigatory powers under 16 Del. C., §1131, et seq.

F. The term "Person" shall mean a human being and, where appropriate, a public or private corporation, an unincorporated association, a partnership, a government or government instrumentality.

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SECTION II: REPORTING

A. Applicability:

1. The Patient Rights Law (16 Del. C. §1131, et seq.) applies to abuse, mistreatment or neglect of patients or residents in:
  - a) Any facility required to be licensed under Chapter 11 of Title 16 of the Delaware Code.
  - b) Any facility operated by or for the State which provides long-term care residential services, such as Group Homes, Foster Care Homes.
2. The statute does not apply to patient-to-patient, or third person-to-patient incidents; however, a facility in which such an incident occurs may find itself culpable if it fails to take corrective action in light of such occurrences. It is recommended, therefore, that an investigation be conducted in those instances, but only to the extent that the facility failed to take steps to provide for the safety of its residents.
3. Nothing in the statute shall be construed to mean that a patient or resident is abused, mistreated or neglected for the sole reason he relies upon, or is being furnished with, treatment by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination, nor shall anything in this subchapter be construed to authorize or require any medical care or treatment over the implied or express objection of said patient or resident.
4. Long-term care residential facilities which serve primarily minors are covered by Delaware Child Abuse Laws. Any referrals coming from these facilities will be referred to Child Protective Services for investigation.
5. A report of suspected abuse of a minor residing in a facility covered under this statute will be referred to the Child Protective Services for joint investigation with the Patient Rights Unit.

B. Persons required to report:

1. Any employee of a facility, or anyone who provides services to a patient or resident of a facility on a regular or intermittent basis, who has reasonable cause to believe that a patient or resident in a facility has been abused, mistreated or neglected shall immediately report such abuse, mistreatment or neglect.
  - a) The person who witnesses abuse, neglect or mistreatment should be the reporting person.

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b) Any person included under (1) above who fails to make a report shall be liable for a criminal fine not to exceed \$1,000.

2. Any person not included under (1) above may make a report if they have reason to believe that a patient or resident of a facility has been abused, mistreated or neglected.

3. The reporting person need no more than 'suspect abuse' to report an incident. .

C. How to report:

1. When an individual has information which leads him/her to believe that a patient or resident in a facility has been abused, neglected or mistreated, he/she should:

a) Immediately report that information to the Patient Rights Unit of the Division of Aging by telephone.

i) During regular office hours (Monday through Friday, 8:00 a.m. to 4:30 p.m.) the telephone number to call is:

421-6791  
or 1-800-223-9074

ii) During non-office hours (evenings and weekends) the telephone number to call is: 421-6711 (New Castle Co.)  
856-6626 (Kent and Sussex)  
or 1-800-652-2929

b) Within 48 hours after the phone call, a written report containing all the available information must be sent to:

i) For a New Castle County facility:

Patient Rights Unit  
Division of Aging  
1901 N. DuPont Hwy.  
New Castle, De. 19720

ii) For a facility in Kent or Sussex:

Patient Rights Unit  
Division of Aging  
Milford State Service Center  
11/13 Church Ave.  
Milford, De. 19963

iii) The requirement for a written report may be satisfied by a copy of the facility incident report, signed by the reporting person, provided that the report contains the minimum information required.

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c) Any person required to make an oral and a written report to do so shall be liable for a criminal fine not to exceed \$1,000.

2. When failure to report comes to the attention of the Patient Rights Unit, the unit shall investigate and forward information to the Attorney General for prosecution/determination.

D. Contents of Reports:

1. When an individual makes a report of suspected abuse, mistreatment or neglect to the Patient Rights Unit, that report should include, at a minimum, the following information:
  - a) Name, sex, age of patient or resident allegedly being abused, neglected or mistreated.
  - b) Name, address and telephone number of the facility.
  - c) Name, address and position or relationship of the reporting individual; where, when he/she may be contacted.
  - d) All information about the nature and extent of the alleged abuse, neglect or mistreatment.
  - e) Circumstances under which the reporting person became aware of the alleged abuse, neglect or mistreatment.
  - f) The nature and extent of the reporting person's contact with the resident in question.
  - g) Information of prior incidents of abuse, neglect, mistreatment to the resident in question, or by the suspected perpetrator to other residents.
  - h) Information about any corrective action taken or treatment provided to the patient or resident in question.
  - i) The condition and functional status of the resident in question (e.g., level of function, mobility, mental status).
  - j) The times and dates of witnessed incidents.
  - k) The identities of other witnesses of the same events.
  - l) Whether other residents of the same facility are being victimized.
  - m) Any other available information pertaining to the alleged abuse, neglect, or mistreatment.

E. Confidentiality:

1. The Patient Rights Unit will treat the identity of the reporting individual as confidential information.

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2. No person making any oral or written report pursuant to this subchapter shall be liable in any civil or criminal action by reason of such report where such report was made in good faith or under the reasonable belief that such abuse, mistreatment or neglect has taken place.
3. No facility shall discharge or in any manner discriminate or retaliate against any person, by any means whatsoever, who in good faith makes or causes to be made, a report under this subchapter, or who testifies or who is about to testify in any proceeding concerning abuse, mistreatment or neglect of patients or residents in said facility.
4. Any facility which discharges, discriminates or retaliates against a person because he has reported, testified or is about to testify concerning abuse, mistreatment or neglect of patients or residents, shall be liable to such person for treble damages, costs and attorney's fees. Where a facility discharges, demotes or retaliates by any other means against a person after he made a report, testified or was subpoenaed to testify as a result of a report required under this subchapter, there shall be a rebuttable presumption that such facility discharged, demoted or retaliated against such person as a result of such report or testimony.
5. This section shall not apply to any person who has engaged in the abuse, mistreatment or neglect of a patient or resident.

F. Police Involvement:

1. The appropriate police agency must always be contacted in cases where abuse, neglect or mistreatment has resulted in death, or if the patient's health or safety is in jeopardy from further abuse, neglect or mistreatment. The Patient Rights Unit shall assure that this has been done.
2. Police should also be involved in those situations which are traditionally part of their work:
  - a) In cases of serious physical injury (assault). This can be defined as physical injury which creates a substantial risk of death, or which causes serious or prolonged disfigurement, impairment of health or loss or impairment of any bodily organ.
  - b) In cases of rape.
3. When conditions stated in (1) and (2) above exist, police must be contacted at the earliest possible time.

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## SECTION III: INVESTIGATION AND SCREENING

## A. Intake and Screening:

1. Verbal reports of abuse, neglect, mistreatment of residents shall be taken by the designated Human Service Worker.
2. All information from a verbal report will be entered on a standardized intake form.
3. Screening will be done by the designated person on the investigating team.
4. Each report will be considered on an individual basis for appropriateness and urgency of response.
5. The following will be notified by the Patient Rights Unit if an investigation of reported abuse, neglect, mistreatment is to be done by that Unit:
  - a) The Attorney General's Office.
  - b) The Administration of the facility involved.

## B. Investigation:

1. In all cases of suspected resident abuse, mistreatment or neglect reported pursuant to 16. Del. Code, §1131, et seq., the Patient Rights Unit of the Division of Aging will:
  - a) Conduct its investigation of the complaint within 24 hours after receiving the oral report if there is any cause to believe that the patient's or resident's health or safety is in immediate danger from further abuse, mistreatment or neglect.
  - b) Conduct its investigation of the complaint within 10 days after receiving the oral report in all other cases.
2. At a minimum, the investigation will include all of the following elements:
  - a) A visit to the facility involved;
  - b) A private interview with the resident allegedly abused, mistreated or neglected;
  - c) Observation of resident within facility environment, if possible;
  - d) An examination of the patient's or resident's medical and other records, as well as any other evidence which may be relevant to the issues involved;

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- e) Assessment of resident's functional level (physical and mental);
  - f) An examination of reports, documents, etc., prepared by the facility which relate to the incident or the facility's investigation of that incident;
  - g) An evaluation of the nature, extent and cause or causes of the injury or harm suffered by the patient or resident in question;
  - h) Interviews with any and all potential witnesses who may have information which is relevant to the issues involved and who are reasonably available for such an interview;
  - i) An attempt to determine the identity of the person or persons responsible for the alleged abuse, mistreatment or neglect;
  - j) An interview with the person or persons allegedly responsible for the suspected abuse, mistreatment or neglect, whenever their identity can be determined and an interview with them is reasonably possible; and
  - k) An evaluation of the environment within the facility and the risks of physical or emotional injury or harm to other patients or residents.
3. All information shall be in a written report and presented to the person(s) responsible for determination of the case.
4. The investigation by the Patient Rights Unit is a preliminary investigation of allegations and not an accusation; therefore, investigators will interview one on one without union or administrative involvement. The "rights" of the person being interviewed go into effect when the preliminary findings turn allegations into accusations, i.e., a person becomes a suspect.
5. In order to assure uniformity, the Director of the investigative team will review all investigation reports for concurrence.

C. Determination:

1. At the conclusion of its investigation, the Patient Rights Unit will prepare a final determination of whether or not sufficient credible evidence exists to sustain the allegations contained in the report.
- a) If the findings indicate that patient or resident abuse, mistreatment, or neglect has occurred and that a particular facility staff person is responsible for that abuse, mistreatment or neglect, the Division will refer the matter to the Attorney General's Office for appropriate action;

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- b) If the investigation reveals that a person who is required by 16 Del. Code, §1121, et seq., to report suspected patient or resident abuse, mistreatment or neglect has failed to do so, the Patient Rights Unit will refer the matter to the Attorney General's Office for appropriate action;
  - c) Upon finding that abuse, mistreatment or neglect has occurred in a facility, the Unit or the Attorney General shall notify the appropriate licensing board and, if such facility receives public funding, the appropriate state or federal agency. If, after a hearing, it is determined that a member of the board of directors or a high managerial agent knew that patients or residents were abused, mistreated or neglected and failed to promptly take corrective action, the appropriate board shall suspend or revoke such facility's license;
  - d) If the person identified in (b) above is a licensed professional, the Patient Rights Unit will, after clearance from the Attorney General's Office, notify the appropriate licensing board in order not to prejudice possible litigation;
  - e) If the findings indicate that there is a pattern of incidents of abuse between patients or residents and the facility might be deemed negligent for the subsistence of that abuse, the Division will refer the matter to the Attorney General's Office for appropriate action.
- 2. The Patient Rights Unit shall attempt to determine validity of the reported abuse, neglect, mistreatment; but not determine the guilt or innocence of the accused.
  - 3. The Patient Rights Unit shall inform the Chief Administrative Officer of the facility upon the completion of the investigation.

## SECTION IV: FACILITY RESPONSIBILITIES

## A. Reporting:

- 1. All facilities covered under the law shall adopt and implement written policies and procedures for reporting and responding to incidents of suspected patient abuse, mistreatment or neglect. At a minimum, these policies and procedures should ensure that:
  - a) All incidents of suspected patient abuse, mistreatment or neglect are reported immediately to the Patient Rights Unit of the Division of Aging.

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- b) Any and all available information which may be relevant to a Division investigation of suspected patient abuse, mistreatment or neglect is made available to the Division upon request.
- c) Reasonable efforts are made to facilitate the Division's attempts to interview any and all potential witnesses who may have information which is relevant to the issues involved in the investigation.
- d) Each facility shall have a written policy regarding internal investigation procedures in reported/suspected cases of abuse, neglect, mistreatment.
- e) The facility must implement their internal investigation policy concurrent with a direct/immediate report to the Division for external investigation.
- f) The results of the facility internal investigation shall be made available to the Patient Rights Unit during their investigation.

B. Protective Action:

- 1. Whenever a patient or resident has suffered physical or psychological harm as a result of suspected abuse, mistreatment or neglect, a long-term care facility should immediately take any and all protective and/or remedial actions which are reasonably necessary to prevent further harm to that patient or resident and/or all other patients or residents. Such protective and/or remedial action should not be delayed solely because the Patient Rights Unit has not completed its investigation. This action should include an immediate physical examination where injury has occurred or is suspected.
- 2. A long-term care facility should also take reasonable and appropriate preventive and/or remedial measures to protect patients or residents from verbal abuse, intimidation or coercion by means of threats to use physical force, violations of a patient's right to be treated with dignity and respect and/or other unreasonable risks of physical or psychological harm.

C. Preventive Training:

- 1. In order to prevent abuse, mistreatment and neglect to the maximum extent possible, each long-term care facility shall provide regular orientation and in-service training programs for all facility personnel which emphasize the following:
  - a) Techniques for management of difficult patients;
  - b) Identification of factors which contribute to or escalate hostile behavior;
  - c) Assessment of personal responses to aggressive or hostile behavior;

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- d) Identification of employee and resident coping behaviors, and reinforcement of positive and adaptive behaviors;
- e) Use of intervention techniques, including verbal responses and safe, non-injurious physical control techniques, as therapeutic tools for hostile patients;
- f) Close observation of new employees during orientation;
- g) Interdisciplinary program planning for patients or residents;
- h) Orientation to employee responsibilities under the Patient Rights Law; including §1131 et seq.

D. Preventive Administrative Policies:

1. In addition, in an effort to prevent patient abuse, mistreatment or neglect, long-term care facilities should adopt and implement administrative, management and personnel policies and practices which include:
  - a) Careful interviewing of employee applicants;
  - b) Close examination of applicant references prior to hiring;
  - c) Cooperation with other facilities in providing information about an employee's ability to handle difficult patients to prospective employers;
  - d) Staff support programs;
  - e) Close scrutiny of incident reports;
  - f) Careful pre-admission assessment of patients;
  - g) Development of patient care plans which include approaches to dealing with patients who may provoke hostile behavior by staff members or fellow patients;
  - h) Provision of relevant information regarding difficult or emotionally unstable patients, and approaches to be used in caring for them on a systematic basis;
  - i) Distribution of Patient Rights brochures to staff;
  - j) Make Patient Rights brochures available to patients, residents, guests, family;
  - k) Display of Patient Rights Law Posters in areas that are visible to any person entering facility.

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